

REMARKS

This amendment is responsive to the final Office Action mailed November 13, 2008, and is submitted concurrently with a Request for Continued Examination (RCE).

The Office Action rejected Claims 1, 12, 22, 30, and 36-38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bernard et al., U.S. Patent No. 5,918,213 (hereinafter "Bernard"), in view of Kinjo, U.S. Patent Application Publication No. 2003/0063575 (hereinafter "Kinjo"). Claims 2, 4-10, 13, 14, 29, and 31-35 were rejected as being allegedly unpatentable over Bernard and Kinjo, and further in view of Siegel et al., U.S. Patent Application Publication No. 2002/0082931 (hereinafter "Siegel"). Claim 3 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Bernard, Kinjo, and Siegel, and further in view of Fitzsimmons, Jr., U.S. Patent Application Publication No. 2002/0068991 (hereinafter "Fitzsimmons").

Applicants have carefully considered the cited references as well as the comments provided in the Office Action, and request reconsideration of the application.

Status of the Claims

Claims 1, 12, 22, 30, 32, and 33 have been amended. Claim 31 has been canceled, while new Claim 39 has been added. The amendments to the claims and the new claim are supported by the specification as originally filed, at least at page 4, line 32, to page 5, line 3; page 12, lines 10-18; and page 14, lines 22-29. Claims 1-10, 12-30, and 32-39 are thus pending in the present application.

Applicants submit that the cited references do not support a *prima facie* rejection of the amended claims under 35 U.S.C. § 103(a). As discussed below, the cited and applied references, whether considered alone or in combination, fail to disclose or suggest all of the elements recited in the claims. The claims should thus be allowed.

Patentability of the Claims

Independent Claim 1

Claim 1 is directed to a method for one or more processing components of a computer system operated by a second retail entity to communicate information regarding a selected item to a user present at the location of a first retail entity, which second retail entity is different from the first retail entity.

As recited in Claim 1, the method includes receiving an image from an imaging device of the user, wherein the image contains multiple instances of identifying data associated with the selected item. For each of the multiple instances of identifying data, the method of Claim 1 further requires extracting the identifying information from the image using a data recognition procedure that produces an output and comparing the output of each of the data recognition procedures to corroborate the identification of the selected item that is obtained from each instance of the identifying data. The corroborated identifying data is thereafter used to obtain item information associated with the selected item and the item information is communicated from the second retail entity to the imaging device of the user.

Claim 1, as amended, further recites "storing at least one of the instances of identifying data or the item information as profile information in a database associated with the user, wherein the profile information is used to anticipate the user's purchasing interests and provide one or more targeted offers to the user." Applicants submit that this element in combination with the other elements of Claim 1 is not taught or suggested by Bernard and/or Kinjo, nor does Siegel cure the deficiency of disclosure.

Amended Claim 1 is therefore patentably distinguished over the cited and applied references. For at least the reasons set forth above, applicants respectfully submit that Claim 1 should be allowed.

Dependent Claims 2 and 4-10

As discussed above, Bernard, Kinjo, and Siegel fail to teach all of the combination of features of independent Claim 1. Where dependent Claims 2 and 4-10 ultimately depend from independent Claim 1, Claims 2 and 4-10 are likewise allowable over Siegel and Kinjo for at least the reasons discussed above in connection with Claim 1. Claims 2 and 4-10 are also allowable for the additional subject matter they recite.

Dependent Claim 3

As with Claims 2 and 4-10, applicants submit that Claim 3 is patentable over Bernard, Kinjo, and Siegel because of the failure of the references to teach all of the features of independent Claim 1. Additionally, applicants have considered the disclosure of Fitzsimmons with respect to Claim 3 and submit that Fitzsimmons does not overcome the deficiencies of disclosure in Bernard, Kinjo, and Siegel as discussed with respect to Claim 1.

Dependent Claims 36-38

Claim 36 is directed to the method of Claim 1 and further comprises "judging a quality of the output of each of the data recognition procedures and using the best identifying data to obtain the item information." The Office Action cited Kinjo at paragraph [0125] as allegedly teaching this feature. However, applicants respectfully disagree.

At paragraph [0125], Kinjo describes a process of comparing similarities of a photographed article with image data of the article. "[T]he identifying process is completed by selecting the data with the greatest degree of similarity above a predetermined value." At best, the process described by Kinjo represents a single data recognition procedure in which image data of the article is identified based on which image data has the greatest similarity with the photographed article. Greater or lesser similarity does not reflect the quality of the comparison process, but rather is a result of comparing different images with the photographed article. Kinjo does not describe judging a quality of the output of each of the data recognition procedures and using the best identifying data to obtain the item information, as claimed in Claim 36.

Claim 37 further comprises "polling the user to determine the correct identifying data for the selected item if the output of the data recognition procedures results in conflicting identifying data." The Office Action cited Kinjo at paragraph [0127] as allegedly teaching this feature. However, applicants respectfully disagree. At paragraph [0127] Kinjo describes displaying multiple images of potential articles to be ordered and allowing the user to designate which image represents the article to be ordered. The images, however, are not "identifying data," but rather are images of the article itself.

Claim 38 recites "wherein if the data recognition procedures output conflicting identifying data, the method further comprises obtaining item information for all of the items identified by the output of the data recognition procedures." The Office Action cited Kinjo at paragraph [0124] but this passage of Kinjo does not discuss multiple data recognition procedures that output conflicting identifying data, nor does it describe obtaining item information for all of the items identified by the output of the data recognition procedures in such circumstances.

Applicants have considered the disclosures of Bernard, Kinjo, Siegel, and Fitzsimmons and submit that the cited art does not teach or suggest the features of Claims 36-38.

Independent Claim 12

Claim 12 was rejected under the same basic rationale as Claim 1. Claim 12 has been amended to further recite "a subsystem with a storage database configured to store at least one of the instances of identifying data or the item information as profile information associated with the user." The profile information "is used to anticipate the user's purchasing interests and provide one or more targeted offers to the user."

For at least reasons similar to those discussed above with respect to Claim 1, applicants respectfully submit that Bernard and Kinjo fail to teach all of the combination of elements recited in Claim 12. Accordingly, Claim 12 is in patentable condition. Withdrawal of the rejection of Claim 12 is requested.

Dependent Claims 13-21

Dependent Claims 13-21 ultimately depend from independent Claim 12. As discussed above, applicants submit there is no combination of Bernard and Kinjo that teaches or suggests all of the elements of independent Claim 12. Claims 13-21 also include a number of recitations not disclosed, taught, or suggested by Bernard, Kinjo, or Siegel, particularly when the recitations are considered in combination with the recitations of Claim 12 from which these claims depend. For at least the above-mentioned reasons, Claims 13-21 are likewise allowable. Withdrawal of the rejections under Section 103 is requested.

Independent Claim 22

Amended Claim 22 recites elements similar to those of amended Claim 1. Accordingly, for at least reasons similar to those discussed above with respect to Claim 1, applicants submit that Bernard and Kinjo, whether considered alone or combined, fail to teach or suggest all of the elements of Claim 22. In particular, Bernard and Kinjo fail to teach the recited "computer-executable component [that] is executed by a server of the second retail entity" that "stor[es] at least one of the instances of identifying data or the item information as profile information in a database associated with the user, wherein the profile information is used to anticipate the user's purchasing interests and provide one or more targeted offers to the user." For at least these reasons, the rejection of Claim 22 should be withdrawn.

Dependent Claims 23-29

Claims 23-29 are dependent on Claim 22 and, thus, are allowable for at least the reasons discussed above in connection with Claim 22. Claims 23-29 also include a number of recitations not disclosed, taught, or suggested by Bernard, Kinjo, or Siegel, particularly when the recitations are considered in combination with the recitations of Claim 22 from which these claims depend.

For example, Claim 29 recites "wherein extracting identifying data associated with the selected item from the image includes processing the universal product code with a UPC recognition program to produce a first output and processing the text with an optical character

recognition program to produce a second output." The Office Action alleged that this feature is taught by Siegel at paragraph [0067] but this passage of Siegel has nothing to do with the recitation of Claim 29. According to Siegel, a monthly billing statement may have a UPC representing the amount due, but there is no discussion of "processing the text with an optical character recognition program to produce a second output."

For at least these reasons, Claims 23-29 are patentable over Bernard, Kinjo, and Siegel.

Independent Claim 30

Claim 30 is directed to an "integrated portable apparatus for obtaining item information for a selected item available for purchase at a location of a first retail entity." The apparatus comprises, among other things, "an input device configured to capture an image that contains multiple instances of identifying data associated with the selected item," and "a processing unit communicatively coupled to the input device, the output device, and the storage medium, for executing the program instructions that process the image." The image processing includes "extracting each of the multiple instances of identifying data from the image using a data recognition procedure that produces an output" and "outputting the identifying data on the output device to allow the user to review and edit or modify the identifying data before the identifying data is communicated to a server operated by the second retail entity." In Kinjo, the image of an article obtained by the portable apparatus is immediately uploaded to a server for processing. The user does not have any input into the process until after the image is uploaded and the image is processed by the server.

Neither Bernard nor Kinjo discloses all the features of Claim 30, and even if combined, the references do not render obvious the apparatus claimed in Claim 30. Applicants therefore submit that Claim 30 is patentable over the cited art.

Dependent Claims 31-35 and 39

Dependent Claims 31-35 depend from independent Claim 30. Claims 31-35 are patentable over Bernard, Kinjo, and Siegel, both for their dependence on Claim 30 and for the additional subject matter they recite.

New Claim 39 is directed to the apparatus of Claim 30, "wherein the processing unit executing the program instructions further stores at least one of the instances of identifying data or the item information as profile information in a database associated with the user, wherein the profile information is used to anticipate the user's purchasing interests and provide one or more targeted offers to the user." The features recited in Claim 39 are not taught or described in the cited art. For at least reasons similar to those discussed above with respect to Claim 1, new Claim 39 is also patentable over the cited art.

CONCLUSION

In view of the foregoing amendments and remarks, applicants submit that all of the pending claims in the present application are in condition for allowance. Reconsideration of the application and allowance of the claims is requested. Should the Examiner have any remaining questions or comments concerning this application, the Examiner is invited to contact the undersigned counsel at the telephone number provided below.

Respectfully submitted,

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